

IN THE MATTER OF MERCHANT MARINE SEAMAN DOCUMENTS NO. Z-198485-D1(R) AND
Issued to: Ellis B. Gaines

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1667

Ellis b. Gaines

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 7 December 1966, an Examiner of the United States Coast Guard at New Orleans, La., suspended Appellant's seaman documents for six months outright upon finding him guilty of misconduct. The specifications found proved allege that while serving as a night cook and baker on board the United States SS ALCOA VOYAGER under authority of the document above described, on or about 3 October 1966, while the vessel was at Ceylon, Appellant did wrongfully address the Chief Steward with foul and abusive language; did wrongfully assault the Chief Steward by brandishing his fist and a knife in the direction of the Chief Steward; and did wrongfully assault and batter the Chief Steward by pushing him.

At the hearing, Appellant elected to act as his own counsel. Appellant entered pleas of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence copies of entries from the ship's Shipping Articles and its Official Logbook and the testimony of the Chief Steward, the Master, and the third Cook.

Appellant offered no evidence in his defense.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specifications had been proved. The Examiner then entered an order suspending all documents issued to Appellant for a period of six months outright.

The entire decision was served on 8 December 1966. Appeal was timely filed.

FINDINGS OF FACT

On 3 October 1966, Appellant was serving as a night cook and baker on board the United States SS ALCOA VOYAGER and acting under authority of his document while the ship was in port at Ceylon. Between 1115 and 1130 hours, Appellant responded to an order of the

Chief Steward by addressing the latter in foul and abusive language and by picking up a knife and making threatening gestures with it to the Chief Steward. The Chief Steward thereupon took leave of his immediate surroundings, but returned a short time later and again experienced the events described above and, in addition, he was physically pushed by Appellant.

Appellant has been going to sea for over 24 years and has no prior record of misconduct.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that this order is excessive in view of Appellant's prior clear record and that, if affirmed, it will work undue hardship upon Appellant.

OPINION

The only matters raised on appeal concern a request for reduction of the suspension period ordered by the Examiner. However, such a reduction is not warranted where, as here, the suspension period ordered is not inconsistent with the offenses shown to have been committed. Appellant's prior clear record and his assertion of hardship do not excuse the misconduct with which he is charged. Thus, I must conclude that the Examiner's order should be affirmed.

ORDER

The order of the Examiner dated at New Orleans, La., on 7 December 1966, is AFFIRMED.

W. J. SMITH
Admiral, United States Coast Guard
Commandant

Signed at Washington, D. C., this 8th day of November 1967.

INDEX

Order of Examiner

Commensurate with offense